IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.430 OF 2002

1. The State of Maharashtra.

2. The Commissioner of Fisheries,
Maharashtra State,
Mumbai. ... ... Petitioners
(Orig. Respondents)

Versus

Shri Ramesh Jagannath Dhadil. ... Respondent
(Orig. Applicant)

Mr.R.M. Patne, Assistant Government Pleader for Petitioners.

Mr.N.V.Bandiwadekar for Respondent.

CORAM : H.L. GOKHALE &
SMT.NISHITA MHATRE, JJ.
DATED : 8th September 2004

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. This Writ Petition seeks to challenge the judgment and order dated 6th August 2001 passed by Maharashtra Administrative Tribunal (for short, "MAT") allowing Original Application No.600 of 2001 filed by the Respondent, who is an employee of the Fisheries Department of the State Government working under Petitioner No.2. The order passed by the MAT directed Petitioner No.2-The Commissioner (Fisheries) to revoke the order of suspension which was passed against the

Respondent.

.2 The brief facts leading to this Petition are as follows:-

. The Respondent was working as an Assistant Fisheries Development Officer at the relevant time under Petitioner No.2. It is alleged that an amount of Rs.500/- was paid by one Mr.Patil to one Mr.Dangre, an officer superior to the Respondent on 8th September 2000 to get his work done. Out of this amount of Rs.500/-, Rs.200/- was supposed to have been passed over to the Respondent. A trap was led and Mr.Dangre was caught therein. As a consequence of his arrest, the Respondent remained in custody in that action for a period of more than 48 hours. He was, therefore, placed under suspension by an order passed on 30th September 2000. That order was passed in view of the provision under Rule 4 (1)(c) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, which provides for a deemed suspension if an employee remains in custody for a period of more than 48 hours. As far as the misconduct is concerned, it appears that Petitioner No.2 decided to go along with the criminal case and to await the decision thereof and no separate departmental enquiry was initiated

against the Respondent. It is necessary to note that the Respondent has been on bail thereafter.

3. It was the case of the Respondent that in such cases of suspension, if a chargesheet is not filed within the period of six months, then the suspension stands revoked automatically. This was on the basis of the Government Resolution dated 3rd April 2000 which was passed after considering the earlier directions and circulars. This Government Resolution laid down the provisions concerning various steps to be taken in actions under the Prevention of Corruption Act, 1988. Clause 5 of this Government Resolution provided for the time table with respect to the actions to be taken. This Clause 5 has 7 sub-clauses. Clause 5(7)(a) lays down that in the trap cases the period for filing the cases (i.e. chargesheets) will be maximum six months. At the end of sub-clause 7(d), it is provided that in the event the competent officer does not take any decision within the period provided, then immediately on the next day at the end of the expiry of the period of suspension, the suspension will be deemed to have concluded. It was, therefore, the case of the Respondent that after the expiry of the period of six months, if the chargesheet is not filed, the suspension shall be

deemed to have expired automatically and revoked. In the present case, admittedly, the chargesheet was not filed within six months and we are now told that it was ultimately filed on 4th September 2001 in the Special Court at Nashik.

.4 In view of this position under the Government Resolution dated 3rd April 2000, in fact, an order revoking the suspension order was issued in the Respondent's case on 4th May 2001 clearly stating that the Respondent's suspension shall be deemed to have revoked with effect from 8th March 2001. The Respondent was allowed to join the duty thereafter. A second order of suspension, however, came to be issued against the Respondent on 23rd May 2001 again placing him under suspension. This order was passed on the basis of a subsequent Government Resolution of the State Government issued on 16th March 2001. This Government Resolution amended the earlier Government Resolution dated 3rd April 2000 and deleted the paragraph (except the last sentence thereof) which is referred to earlier and which existed at the end of clause 5(7) as mentioned above. It was, therefore, the stand of Petitioner No.2 that since this paragraph was deleted by virtue of the Government Resolution dated 16th March 2001, the Respondent had to be suspended.

5. The Respondent felt aggrieved by this second suspension order and, therefore, filed the above-mentioned Original Application No.600 of 2001 in the MAT. The Tribunal having heard both the parties, noted that the Authorities themselves have revoked the suspension order earlier. The Tribunal further noted that when that was the position, the Authorities will be entitled to issue a suspension order once again only after filing of the chargesheet, if at all they deem it proper to suspend him. The MAT noted that admittedly till its decision which was rendered on 6th August 2001, no chargesheet had been filed. In the circumstances, the learned Judge of the MAT came to the conclusion that the issuance of the second suspension order was uncalled for and bad in law and therefore, directed that the suspension order be revoked. It is against this order that the present Petition has been filed.

6. A stay, as prayed by the State Government, was granted on 13th February 2002, though the Petition came to be admitted much later i.e. on 25th November 2002.

7. Mr.Patne, learned Assistant Government Pleader, submitted that when the Government

Resolution dated 3rd April 2000 was appropriately amended on 16th March 2001 and the relevant provision was deleted, the State Government had assumed the power to suspend the employees in such cases. The rule providing for revoking of suspension, if chargesheet is not filed within six months, stood revoked and no longer existed after the issuance of the second Government Resolution dated 16th March 2001. That being the position, the Government was within its powers to issue the second suspension order on 23rd May 2001.

8. Mr.Bandiwadekar, learned Counsel appearing for the Respondent, on the other hand, pointed out that the earlier Government Resolution dated 3rd April 2000 provided for automatic revocation of the suspension order in the event the chargesheet was not filed within a period of six months. In the instant case, though the revocation order was issued on 4th May 2001, it was made effective after expiry of six months from arrest i.e. 8th March 2001. This was a date prior to the issuance of the second Government Resolution which was issued on 16th March 2001. Thus, in his submission, merely because the revocation order was issued on 4th May 2001, it cannot be said to be governed under the Government Resolution dated 16th March 2001. For that purpose,

Mr.Bandiwadekar drew our attention to an order dated 24th August 2001 issued in the similar case of another employee one Mr.B.G. Nandanwar. In his case, the revocation order dated 24th August 2001 was issued admittedly after the issuance of the second Government Resolution dated 16th March 2001. Yet inasmuch as he was suspended on 29.9.2000 i.e. during the subsistence of earlier Government Resolution of 3rd April 2000, the suspension was revoked. Mr.Bandiwadekar, therefore, submitted that the same logic applies to the present case. In the present case also the period of six months expired on 8th March 2001 and, therefore, the Government Resolution, which is issued subsequently on 16th March 2001, could not be retrospectively applied. He pointed out that this Government Resolution dated 16th March 2001 specifically states in Clause 3 thereof that it is to be effective from the date of the Government Resolution making it prospective in its operation.

9. The second submission of Mr.Patne, learned AGP, was on the basis of the two Government decisions dated 14th December 1995 and 14th June 1996, which are annexed to the Affidavit of one Mrs.R.D. Rane, Assistant Director of Fisheries, affirmed on 1st April 2002. In the first

Government decision dated 14th December 1995, it is stated that in cases of unexplained income, murder, attempt to murder, rape and anti corruption cases, at times, a longer time is required to take necessary steps. Therefore, in such cases, the employee concerned normally ought to be kept under suspension until the entire prosecution gets concluded in the Criminal Court. The second decision dated 14th June 1996, however, provides in continuation of the earlier decision of 14th December 1995 that in the event such suspension is a long one, then from time to time a review be taken and a decision be arrived at as to whether such suspension should be continued or not. Inasmuch as Mr.Patne was relying on these two Government decisions, we asked him as to whether any review was taken in the case of the Respondent and the answer given is that no such review has been done. We asked Mr.Patne with respect to the past record of the Respondent and he informed that the past record of the Respondent is clean.

10. In any case, it is material to note that both these Government decisions relied upon by the State Government are issued in the years 1995-1996, whereas the Government Resolution dated 3rd April 2000 was issued subsequent thereto and

in the preamble itself it states that it has been issued after considering all earlier circulars and decisions. Mr.Bandiwadekar, therefore, submits that the Government decisions of 1995-1996 cannot be said to be holding the field after the Government Resolution dated 3rd April 2000, which provided that if the period of six months is completed and a chargesheet is not filed, then a suspension order will stand revoked automatically.

11. We are in agreement with Mr.Bandiwadekar even with respect to his second submission. The language of the Government Resolution dated 3rd April 2000 is very clear. In preamble itself, it clearly states that it has been issued after considering all the earlier decisions and circulars and thereafter only this Resolution has been issued. This is also logical because although the Government decision dated 14th June 1996 provided that the appropriate scrutiny will have to be taken from time to time, in fact, that was not happening and, therefore, the period of six months was laid down. It is another matter that subsequently once again the State Government reviewed its decision and issued another Government Resolution dated 16th March 2001, which provided that there will not be such a limit of six months. However, it is material to note that

the Government Resolution dated 16th March 2001 in terms stated that it will be effective prospectively.

12. This being the position, in our view, the Petitioner-State Government was obviously in error in passing the second order and placing the Respondent under suspension once again. We, therefore, confirm the order dated 6th August 2001 passed by the Maharashtra Administrative Tribunal, though for the reasons that we have given in our order. The Petition filed by the State Government will, therefore, stand dismissed. The interim orders passed earlier will stand vacated.

13. The 2nd Petitioner-Commissioner of Fisheries will allow the Respondent to join the duty at the earliest after completing the administrative formalities within four weeks. Mr.Bandiwadekar makes a statement, on the instructions of the Respondent, who is present in Court, that the Respondent has no objection if he is transferred to any other office which is under the 2nd Petitioner, though under an equivalent post. Mr.Bandiwadekar, however, makes a request that since the Respondent is required to attend the Special Court at Nashik, he may be given a posting to nearby area. On a query from the

Court, Mr.Patne, learned AGP, on the instructions of Mr.R.Z. Mandhare, Assistant Director of Fisheries (Administration), informs that the equivalent posts are available at Mumbai, Pune, Satara, Dhule and Aurangabad. It will be open to the 2nd Petitioner to give an appropriate posting to the Respondent in any of these offices.

14. Under the order passed by the Maharashtra Administrative Tribunal, the Respondent was required to join the duty on or before 27th August 2001. However, in view of the stay granted by this Court on 13th February 2002, he has not been allowed to join the duty. As directed above, the Respondent can now to resume the duty within four weeks. However, the difference in pay from 23rd May 2001 (the second order of suspension) until he joins the duty, will have to be paid to the Respondent. Mr.Patne, AGP, prays that a period of three months be granted for this purpose. Petitioner No.2 will clear the arrears due to the Respondent within three months from today.

15. Accordingly, the Petition is dismissed. There will be no order as to costs. Although we are dismissing this Petition, we clarify, by way of abundant caution, that this order does not, in any way, mean any reflection on the merits of the

prosecution being faced by the Respondent.

16. All parties will act on an authenticated copy of this order.

__ _____**(H.L. GOKHALE, J.)**

(SMT.NISHITA MHATRE, J.)